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Human resources management

Human resources management

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the implementation of continuing appointments (A/64/267), the report of the Secretary-General on the provisional Staff Rules (A/64/230), the report of the Secretary-General on his practice in disciplinary matters and possible criminal behaviour from 1 July 2008 to 30 June 2009 (A/64/269), the report of the Secretary-General on the activities of the Ethics Office (A/64/316) and the report of the Secretary-General on the composition of the Secretariat (A/64/352). During its consideration of the reports, the Committee met with representatives of the Secretary-General, who provided additional information and clarification. The Committee also met with representatives of the United Nations Staff Union in New York at their request.

I. Implementation of continuing appointments

2. In section II, paragraph 2 of its resolution 63/250, the General Assembly approved new contractual arrangements comprising three types of appointment — temporary, fixed-term and continuing — under one set of Staff Rules. Those arrangements entered into force on 1 July 2009. In paragraph 3, the Assembly requested the Secretary-General not to appoint any staff to continuing contracts before 1 January 2010 pending consideration by the Assembly of additional information concerning the implementation of such contracts.

3. The report of the Secretary-General on the implementation of continuing appointments (A/64/267) responds to the specific request of the General Assembly in section II, paragraph 4 of its resolution 63/250, that the Secretary-General report to it at its sixty-fourth session on the following issues with a view to the implementation of a system for the continuing appointment regime by 1 January 2010:

Please recycle

(a) Rigorous and transparent procedures for granting continuing appointments to staff, including the criteria for eligibility, the relationship with disciplinary measures and the central management of conversions;

(b) The role of the performance appraisal system and options for strengthening it to ensure that staff members considered for continuing appointments have demonstrated the highest standards of efficiency, competence and integrity, taking into account any deliberations of the International Civil Service Commission (ICSC) on this issue;

(c) The financial and management implications of converting appointments from fixed-term to continuing, and the possible establishment of a ceiling on the number of conversions;

(d) Analysis of the implications of the proposed continuing appointments for the system of geographical ranges;

(e) Rigorous and transparent procedures to review the performance of staff and the continuing need for functions when determining the granting and termination of an appointment of a staff member, as well as clear and firm lines of accountability, to fully ensure that the granting and termination of continuing contracts is undertaken in a fair and transparent manner, with full regard to due process and the rights of staff;

(f) Options for ensuring that successful candidates from national competitive examinations and language staff are not disadvantaged by proposed changes;

(g) Analysis of the implications for Junior Professional Officers;

(h) The potential ramifications of the proposed amendment to staff regulation 9.1.[1]

4. In paragraphs 3 to 5 of his report, the Secretary-General provides some background information on the implementation of continuing appointments and states that, under the contractual framework of the United Nations common system adopted by ICSC, the continuing appointment is intended for career staff who provide programme continuity in core functions of the Organization. The Organization must have a continuing need for the core functions in accordance with its mandate before granting a continuing appointment that by its very nature is open-ended. The Advisory Committee notes that formal staff-management consultations on the Secretary-General's proposals were held during the last four sessions of the Staff-Management Coordination Committee.

5. **The Advisory Committee considers that the proposals outlined by the Secretary-General do not respond fully to the request of the General Assembly referred to in paragraph 3 above. Accordingly, the Committee identifies below the areas which, in its view, require further clarification and/or explanation if the General Assembly is to take a fully informed decision on the implementation of continuing appointments.**

[1] Refers to the former staff regulation 9.1, now staff regulation 9.3.

Eligibility criteria: five years of continuous service

6. In paragraphs 6 and 7 of his report, the Secretary-General sets out the criteria for eligibility for consideration for a continuing appointment. He proposes that a Secretariat staff member with five years of continuous service in an entity that applies the Staff Regulations and the Staff Rules, irrespective of the type of appointment — i.e. staff members previously appointed under the 100, 200 or 300 series or appointed since 1 July 2009 under the new Staff Rules — would be eligible for consideration for a continuing appointment. In addition, there would have to be a continuing need for the services of the staff member in the Organization, and he or she would have to meet the highest standards of efficiency and competence, as evidenced by a performance rating of 3 or above in the four most recent performance appraisal reports[2] as well as the absence of any disciplinary measure imposed during the five years preceding the review.

7. In order to facilitate the General Assembly's consideration of this issue, the Advisory Committee sought clarification as to the total number of staff who, in accordance with the Secretary-General's proposals, could ultimately be awarded permanent or continuing appointments.

8. With regard to permanent appointments, the Advisory Committee was provided, upon enquiry, with updated information concerning the number of staff holding such appointments. As at 30 June 2009, the total population of staff holding 100-series appointments at Headquarters, regional commissions and offices away from Headquarters was 13,648. Of that group, 4,759 staff members, or 34.9 per cent, held a permanent or probationary appointment, and 6,571 staff members, or 48.1 per cent, were eligible for consideration for conversion to a permanent appointment in the context of the one-time review of staff eligible for consideration for conversion to permanent appointments referred to in paragraphs 47 to 52 of the Secretary-General's report. Of the 6,571 individuals eligible for consideration for a permanent appointment, 333 would be retiring during the five-year period from 2009 to 2013, leaving a net maximum of 6,238 individuals who could be granted permanent appointments. The Advisory Committee notes that, unlike continuing appointments, permanent appointments cannot be terminated in the interest of the good administration of the Organization without the consent of the staff member (see staff regulation 9.3 (b)). Thus, by 2013, and after completion of the one-time review, the total number of permanent appointment holders could potentially rise to 10,997. The Committee notes that this number would represent around 80 per cent of all staff holding 100-series appointments at Headquarters, regional commissions and offices away from Headquarters.

9. With regard to the aforementioned one-time review, the Advisory Committee notes from paragraph 48 of the report that the Secretary-General states that the review is being conducted in order to protect the acquired rights of fixed-term staff appointed under the previous 100 series of the Staff Rules who met the conditions of

[2] The current performance appraisal rating scale consists of the following five ratings: 1 (consistently exceeds performance expectations); 2 (frequently exceeds performance expectations); 3 (fully meets performance expectations); 4 (partially meets performance expectations); and 5 (does not meet expectations). The Advisory Committee was informed that, during the biennium 2006-2007, 99.4 per cent of staff received fully successful performance ratings (a rating of 3 or above).

the old rule 104.12 (b) (iii).[3] A Secretary-General's bulletin, setting out the eligibility criteria and the procedures to be followed, has been issued (ST/SGB/2009/10).

10. As for continuing appointments, the table immediately below paragraph 20 of the Secretary-General's report illustrates the number of staff eligible for continuing appointment, by year. It was clarified to the Advisory Committee, upon enquiry, that the table related only to staff serving at headquarters locations and the regional commissions; staff at field missions were excluded. The Committee notes in that connection that, as at 30 June 2009, there were just under 15,000 staff serving at headquarters and at the regional commissions (see A/64/352, figure I). According to the aforementioned table, a cumulative total of 4,511 staff would meet the basic eligibility criterion for consideration for conversion to a continuing appointment, i.e. those with five years' continuous service with the Organization, over the next five years (2009 to 2013). Upon enquiry, the Advisory Committee was informed that 92 of those individuals would retire during the five-year period in question, leaving a net maximum of 4,419 staff who could hold a continuing appointment (assuming that all those who met the basic eligibility criterion also satisfied the other requirements referred to in paragraph 6 above).

11. With respect to mission staff, the Advisory Committee notes that, as at 30 June 2009, there were around 23,000 staff members serving in peacekeeping missions and other field locations (see A/64/352, figure I). Upon request, the Advisory Committee was provided with the following table showing the number of mission staff, both internationally and locally recruited, on fixed-term appointments as at 1 July 2009 who, in accordance with the Secretary-General's proposals, would be eligible for consideration for a continuing appointment after completing five years of continuous service.

Number of mission staff eligible for continuing appointment, by year

Category	*2009*	*2010*	*2011*	*2012*	*2013*	*Cumulative total for the five-year period*
Professional	646	268	300	437	586	2 237
Field service	1 389	407	387	651	587	3 421
National Professional Officers	141	103	155	165	163	727
General service	3 258	1 867	2 607	2 662	2 889	13 283
Total	**5 434**	**2 645**	**3 449**	**3 915**	**4 225**	**19 668**

The Committee was further informed that, of the 19,668 eligible staff, 709 would retire during the five-year period in question, leaving a net maximum of 18,959 staff who could hold a continuing appointment.

[3] In his report entitled "Investing in people", the Secretary-General indicated that, while permanent appointments would no longer be offered, under the proposed new contractual arrangements, the acquired rights of staff who, by the time the new regime became effective, would have the right to be considered for permanent appointment would not be affected (see A/61/255, para. 247). Subsequently, in its resolution 63/271, the General Assembly requested the Secretary-General to report to it on the full implications of converting all currently eligible staff to permanent appointments.

12. The situation concerning the number of international staff at field missions who might become eligible for continuing appointments is unclear because of an ambiguity in the Secretary-General's report. He asserts in paragraph 7 that staff previously appointed under the 100, 200 or 300 series or appointed since 1 July 2009 under the new Staff Rules would be eligible for consideration. However, the Advisory Committee recalls that, in section II, paragraph 10 of its resolution 63/250, the General Assembly decided that field staff serving on 300-series appointments of less than four years who were not performing temporary functions would be given mission-specific fixed-term contracts until such time as they had gone through a competitive process subject to the review of a central review body. It therefore appears that, on account of their recruitment status, such staff could not be awarded continuing appointments prior to such a review. While the Committee was informed, upon enquiry, that field review bodies were being established in field missions, it did not receive information on the number of staff in the table above who are limited to mission service or on the specific time frame for the competitive processes and central review. **Clarification as to the sequencing of the central review process and the review of eligibility for consideration for continuing appointment should be provided to the General Assembly.**

13. Of the maximum number of 18,959 staff members serving in peacekeeping operations and other field locations who could be awarded continuing appointments in the five-year period from 2009 to 2013, 13,751 are locally recruited (General service and National Professional Officers). In accordance with the proposal put forward by the Secretary-General at the sixty-second session, those individuals would be eligible to receive continuing appointments if their services continued to be needed beyond five years and if they met the applicable standards. According to the Secretary-General, they would receive termination indemnities commensurate with their length of appointment when their service ended, normally with the closure of the mission. The Advisory Committee recalls that this particular proposal was made in response to the recommendation of the Staff-Management Coordination Committee that the Organization has an obligation to offer both greater job security for the duration of a mission and end-of-employment termination benefits that will enable locally recruited mission staff to be gainfully employed, or self-employed, when a mission withdraws (see A/62/274, para. 47).

14. **Unlike the Secretary-General, the Advisory Committee is not convinced that locally recruited mission staff should be eligible for continuing appointments. Although peacekeeping has become a core activity of the Organization, individual peacekeeping operations are, by their very nature, temporary. Awarding continuing appointments to locally recruited staff whose service is limited to one operation in one location seems to contradict the principle underlying the introduction of continuing appointments. Accordingly, the local staff employed by those operations should continue to be hired on contracts of a finite duration.**

15. **Although the data in paragraphs 8 to 14 above are not definitive, the Advisory Committee can draw a certain number of conclusions. First, a very large percentage of the non-field mission staff of the Organization will be eligible for permanent appointment. Second, the Secretary-General's report does not contain even a tentative estimate of the actual number of staff who might eventually be awarded continuing appointments; indeed, the eligibility of international staff in field missions is unknown. Some 5,200 would be eligible**

over the next five years, but those on mission-specific fixed-term contracts, until they have been through a competitive process subject to the review of a central review body, will be limited to mission service (see para. 12 above). Thus it seems that the staffing structure at headquarters locations will be more rigid than ever, while progress will be far slower with respect to the integration of peacekeeping staff into a career stream. This would appear to put field staff at a significant disadvantage vis-à-vis their non-field counterparts. While this may be the unavoidable by-product of the one-time review and the provisions of section II, paragraph 10 of General Assembly resolution 63/250, the Advisory Committee recommends that the Secretary-General take measures to improve the security of tenure of mission staff by, for instance, offering them appointments of a duration that reflects mission operational requirements.

16. **Third, in the absence of definitive data on the number of staff who may ultimately be awarded continuing appointments, the Advisory Committee considers that it is difficult to see how the Secretary-General would respond to the provisions of section II, paragraph 16 of resolution 63/250, which refers to the need for a judicious mix of career and fixed-term appointments.** Upon enquiry, the Advisory Committee was informed that it was envisaged that retirements would allow for that mix.

17. In this connection, the Advisory Committee notes from the report on the composition of the Secretariat that a total of 1,720 Secretariat staff on 100-series appointments of one year or longer, or an average of 382 staff per year for the next four and a half years, will retire during the period from 2009 to 2013 (see A/64/352, para. 56). The Committee was informed, upon enquiry, that only around 150 P-3 posts with guaranteed funding for one year or more were advertised each year. Under the new contractual regime, successful applicants would be offered fixed-term appointments which, subject to satisfactory service and provided that there was an ongoing need for the post in question, could be renewed. **From these figures, the Advisory Committee concludes that opportunities to recruit new staff on contracts of one year or longer and thus to bring in fresh insight and expertise are currently rather limited. The Secretary-General should therefore explain in more detail to the General Assembly how he intends to achieve the judicious mix of career and fixed-term appointments referred to in resolution 63/250.**

Eligibility criteria: continuing need

18. In paragraph 12 of his report (A/64/267), the Secretary-General indicates that the issue of continuing need would be one of the main criteria for the granting of a continuing appointment. He asserts, in that respect, that the anticipated longevity of the programme, in combination with the suitability of an individual for longer-term functions, would determine the continuing need for the services of the staff member concerned.

19. The Advisory Committee enquired whether the Secretary-General had attempted to quantify continuing need in the major occupational groups since, absent that information, it was not clear to the Committee how the Secretary-General could know how many continuing appointments should be awarded in any particular group, bearing in mind also the need to preserve opportunities for new staff. The Committee was informed that such information was not available, but that

the Secretary-General was working on the assumption that functions performed at headquarters locations were likely to be of an ongoing nature.

20. The Advisory Committee recalls that, in the report on human resources management reform that he submitted to the General Assembly at its sixty-third session (see A/63/282, paras. 12 and 31), the Secretary-General indicated that, in order to undertake a more strategic, proactive and planned approach to human resources management, workforce planning was being introduced Secretariat-wide during the biennium 2008-2009. He further stated that the new talent management tool would support the implementation of strategic workforce planning Secretariat-wide and would also be used for the introduction of a skills inventory. During the course of its consideration of the Secretary-General's report on the implementation of continuing appointments, the Advisory Committee enquired whether the Office of Human Resources Management had compiled any data showing which specific skills or functions would be needed by the Organization on an ongoing basis. The Office responded that no such information was available.

21. **The Advisory Committee considers that, in the absence of Organization-wide data on the types of functions for which there is a continuing need and on the populations required in the major occupational groups, it will be difficult to have a basis on which to award continuing appointments. The Committee therefore recommends that the Secretary-General make use of the strategic workforce planning techniques that should already be in place to provide a clearer picture of ongoing functions, as well as an estimate of how many staff members in the major occupational groups would be required on a continuing basis to ensure the effective implementation of the Organization's mandates. That information should be provided directly to the General Assembly.**

22. The Advisory Committee notes from paragraph 12 (b) of the Secretary-General's report (A/64/267) that the long-term need for a staff member's services would also be assessed on the basis of whether his or her qualifications and past experience and training demonstrate that he or she might have transferable skills with a potential to perform long-term functions that may be different from those of the post he or she is occupying at the time of the review. However, the Secretary-General's report does not contain any information on the criteria that will be used during the review process to determine whether or not a particular individual has transferable skills. **The Advisory Committee stresses the need for the development of clear and transparent criteria so as to ensure an objective process and avoid recourse to the system of administration of justice.** The Committee has commented in more detail on the review process in paragraphs 31 to 33 below.

Eligibility criteria: performance

23. The final eligibility criterion discussed in the Secretary-General's report is performance. As indicated in paragraph 26, a thorough review would be made of the staff member's performance, including examination of his or her official file and performance evaluations. The staff member would need to have received fully successful performance ratings for the last four years and should not have been subject to any disciplinary measure during the five years prior to the review in order to satisfy the criteria of the highest standards of efficiency, competence and integrity.

24. The Advisory Committee has, on previous occasions, emphasized the need for reform of the current performance appraisal system, stressing that a credible, fair and fully functioning system is critical to effective human resources management policies (see, inter alia, A/63/526, para. 24). In paragraph 27 of his report, the Secretary-General indicates that an intersessional staff-management working group was established in 2007 to develop mechanisms to strengthen the performance management system. The group is due to complete its work by the end of 2009. Upon enquiry, the Advisory Committee was informed that phase I of the redesigned system was scheduled for global roll-out and implementation in April 2010, to coincide with the start of that year's performance appraisal cycle. The performance management design team was currently engaged in business process blueprinting and was undertaking Organization-wide consultations with staff representatives. The new system included the following elements: a multiple rating system (to be implemented on a pilot basis); a new rating scale with enhanced emphasis on staff development; a strategy for mandatory performance management training for all staff with supervisory responsibilities; and a strengthening of the role of the Management Performance Board and the Joint Monitoring Committee.

25. The Advisory Committee notes the efforts under way to strengthen the performance management system. The Committee further notes that, as requested by the General Assembly in section VI, paragraph 4 of its resolution 63/250, the Secretary-General will report to the Assembly at its sixty-fifth session on the review of the current performance appraisal system. **The Advisory Committee looks forward to receiving the Secretary-General's report.**

Possible establishment of a ceiling

26. In paragraphs 13 to 24 of his report (A/64/267), the Secretary-General discusses the possible establishment of a cap or ceiling on the number of staff who would be eligible to be considered for or who would be granted continuing appointments. In paragraphs 13 and 14, he states that such a ceiling could potentially limit the number of staff holding such appointments as well as the related financial liability to the Organization linked to the payment of termination indemnity to holders of continuing appointments should their appointments need to be terminated. In paragraph 15, however, he reaffirms his earlier position, as expressed in his report on streamlining contractual arrangements (see A/63/298, para. 30), that a ceiling on the number of conversions to continuing appointments would not be sound management practice. He considers that that imposition of a ceiling may result in excluding certain staff who are otherwise eligible for consideration for a continuing appointment on the basis of all the stated criteria, which would very likely lead to claims of arbitrariness and would appear to run counter to the notion that the conversion process is merit-based. Furthermore, the Secretary-General considers that a ceiling linked to particular posts, mandates or functions would be inconsistent with the Organization's operational requirements and mobility policy, as staff would be discouraged from applying for and accepting posts in specific projects or entities if they were to be ineligible for continuing appointments. He also believes that a ceiling would become very burdensome from an administrative perspective.

27. In paragraph 17 of his report, the Secretary-General expresses the view that the proposed criteria for conversion will already effectively exclude staff who do not meet them. In paragraph 23, he states that those criteria would also ensure that

continuing appointments would not be granted "automatically", thereby addressing previous concerns that eligibility for consideration for continuing contracts would be tantamount to automatic conversion.

28. **The Advisory Committee recognizes that, given the significant population of staff who may be awarded permanent appointments consequent to the one-time review, as well as the significant growth in recent years in the number of staff working in United Nations peace operations, it will, in all likelihood, be necessary to regulate the total number of staff with a long-term claim on the Organization. The Committee also recognizes that there may be some need to ensure that the Organization can adjust its staff population and profile to changing needs.** In this connection, the Secretary-General points out in paragraph 34 (g) of his report that, pursuant to provisional staff rule 9.6 (d), a continuing appointment can be terminated in the interest of the good administration of the Organization, without the staff member's consent. The Advisory Committee recalls that, in section II, paragraph 22 of its resolution 63/250, the General Assembly decided that, in the context of the Secretary-General's proposal, "in the interest of the good administration of the Organization" is to be interpreted principally as a change or termination of a mandate.

29. **While acknowledging the basis for the underlying concerns about regulating the total number of staff with a long-term claim on the Organization, the Advisory Committee reiterates its earlier recommendation against the establishment of a ceiling (see A/63/526, para. 39). Rather than establishing a ceiling, the General Assembly could, as an initial measure, consider adjusting the eligibility criteria in order to limit the eligible population.**

30. With particular reference to the Secretary-General's contention that a ceiling linked to particular posts, mandates or functions would be inconsistent with the Organization's mobility policy, the Advisory Committee points out that no such policy currently exists (see A/63/208). **The General Assembly may wish to request the Secretary-General, as part of the review of the mobility policy that is to be submitted at the sixty-fifth session, to address the relationship between mobility and continuing appointments.**

Rigorous and transparent procedures for the granting of continuing appointments

31. In section II, paragraph 4 (a) of its resolution 63/250, the General Assembly requests the Secretary-General to report on rigorous and transparent procedures for granting continuing appointments to staff, including the central management of conversions. Paragraphs 29 to 32 of the Secretary-General's report respond to that request. The Secretary-General proposes that all cases of staff members eligible for consideration for a continuing appointment should be reviewed by a joint review body, which would conduct a rigorous review of both the staff member's performance and the continuing need for the functions. Since the General Assembly has already acknowledged, in section II, paragraph 18 of its resolution 63/250, that there is a need to centrally manage the conversion from fixed-term to continuing appointments on a competitive and transparent basis, the Secretary-General further proposes that the Office of Human Resources Management, on behalf of the Secretary-General, would retain overall authority to grant continuing appointments, which would be delegated to offices away from Headquarters and field missions for

locally recruited staff. Accordingly, joint review bodies would be centralized for international staff while for local staff they would be established locally.

32. The Advisory Committee notes that the proposed review process outlined in paragraph 31 of the Secretary-General's report consists of a three-stage procedure involving programme managers, the Office of Human Resources Management and the joint advisory body. Upon enquiry, the Committee was informed that a multiple-step review process was necessary to ensure that conversion did not occur "automatically". **The Advisory Committee agrees with the Secretary-General that the conversion process should be managed centrally by the Office of Human Resources Management, primarily because the latter is the only entity that is equipped to have a global picture of overall workforce needs. The Committee is concerned, however, that the proposed process is overly burdensome. In addition, considering that around 9,600 staff members, or an average of around 1,900 a year, will become eligible for consideration for conversion to continuing appointments during the five-year period from 2009-2013, the Committee believes that the review will be very time-consuming for those administering it. To streamline the process, one option would be to refer cases to a joint advisory body for review only where there is disagreement between the programme manager and the Office of Human Resources Management. The General Assembly may wish to request that the Secretary-General, while ensuring that the review process remains sufficiently rigorous, identify other options for streamlining it.**

33. The Advisory Committee recalls that, in its previous report on human resources management reform, it requested information about the composition of the joint advisory body and its rules of procedure (see A/63/526, para. 36). The only information in the Secretary-General's report that appears to respond to this request is the statement, in paragraph 32, that the persons involved directly in the review, including those on the joint review bodies, must be capable of taking an organization-wide view and have enough knowledge to assess future requirements and staff potentials. Upon enquiry, the Committee was informed that the joint review bodies would be composed of representatives of staff and management. Staff-management consultations on their terms of reference would be held in due course. **The Advisory Committee is of the view that the Secretary-General's report does not explain how members of the joint review bodies would be able to take an organization-wide view or have enough knowledge to assess future requirements and staff potential. The Committee recommends that the Secretary-General clarify this aspect of his proposal to the General Assembly when it considers this issue.**

Implications of continuing appointments for the system of geographical ranges

34. Paragraphs 42 and 43 of the Secretary-General's report (A/64/267) respond to the General Assembly's request that he conduct an analysis of the implications of the proposed continuing appointments for the system of geographical ranges. According to the Secretary-General, the introduction of continuing appointments will have no impact on the system, because the appointment status of a staff member and his or her type and duration of appointment are not linked. The Advisory Committee notes the information provided by the Secretary-General and recalls that the issue of geographical representation will be discussed in more detail at the sixty-fifth session when the General Assembly considers broader human resources issues.

II. Provisional Staff Rules

35. The report of the Secretary-General on the provisional Staff Rules (A/64/230) was submitted pursuant to staff regulation 12.3 and provides information on the new Staff Rules that the Secretary-General provisionally promulgated on 1 July 2009 (see ST/SGB/2009/7) in order to implement the new contractual arrangements approved by the General Assembly in its resolution 63/250. In accordance with staff regulation 12.4, the provisional Staff Rules will enter into full force and effect on 1 January 2010 taking into account any modifications and/or deletions directed by the General Assembly during the main part of its sixty-fourth session.

36. Section V of the Secretary-General's report gives an overview of the structure and content of the provisional Staff Rules, which were prepared using the 100 series as a baseline while ensuring that the operational requirements of the 200 and 300 series were incorporated. The provisional Rules consist of 13 chapters that follow the same order and structure as the previous 100 series from chapter I to XII. Notable changes to the Rules include:

(a) The introduction of a new chapter II on the classification of posts and staff;

(b) The amendment of chapter III on salaries and related allowances and chapter IV on appointment and promotion to reflect the implementation of the new contractual framework;

(c) The reorganization of chapter IX on separation from service so as to, inter alia, include the new ground for termination "in the interest of the good administration of the Organization" for staff members holding continuing appointments, to apply also when the staff member is not in agreement;

(d) The amendment of chapters X and XI on disciplinary measures and appeals, respectively, in order to reflect the decision of the General Assembly on the implementation of the new system of administration of justice in the United Nations;

(e) The introduction of a new chapter XIII on transitional measures, which reflects the protection of acquired rights for serving staff members under the former 100, 200 and 300 series of the Staff Rules, in particular those holding probationary, permanent or indefinite appointments.

37. The Advisory Committee notes that, as the Secretary-General indicates in paragraphs 16 and 17 of his report, the Office of Human Resources Management conducted extensive consultations on the draft provisional Staff Rules with various stakeholders, including Staff Union representatives. The Committee was informed, upon enquiry, that, since the provisional Staff Rules had not been drafted within the framework of the Staff-Management Coordination Committee, representatives of the United Nations Staff Union in New York, which had withdrawn from participation in the Coordination Committee, had taken part in the consultations.

38. As for the text of the provisional Rules, the Advisory Committee notes that, as indicated by the Secretary-General in paragraph 25 of his report, the language of provisional staff rule 4.14 on continuing appointments and provisional staff rule 4.15 (j) on the role of the central review bodies in the conversion or granting of

continuing appointments indicates that the granting of such appointments is subject to the Assembly's further consideration of this issue at its sixty-fourth session.

39. With specific reference to provisional rule 4.14 (c), the Advisory Committee, during its consideration of the Secretary-General's report, expressed concern that the present wording ("The Secretary-General shall prescribe which staff members are eligible for consideration for continuing appointments") suggests that the Secretary-General will have the discretion to select individual staff members for consideration for continuing appointments. It was clarified to the Committee that the intention of the provision was to endow the Secretary-General with the authority to prescribe the criteria determining staff members' eligibility for consideration for continuing appointments. **The Advisory Committee trusts that provisional staff rule 4.14 (c) will be amended to reflect that understanding.**

40. **The Advisory Committee recommends that the General Assembly request the Secretary-General to amend staff rules 4.14 and 4.15 (j) on the basis of its consideration of the report of the Secretary-General on continuing appointments at its sixty-fourth session and report on the new Staff Rules in accordance with staff regulation 12.3 at its sixty-fifth session.**

41. In section VI of his report, the Secretary-General addresses the issue of permanent resident status, a question that was last discussed by the General Assembly at its sixty-first session (see A/61/228 and Corr.1 and A/61/537). In paragraph 36, he indicates that the requirement to renounce permanent resident status stems from a long-standing policy articulated by the General Assembly in 1953, when the Fifth Committee, upon the recommendation of the Advisory Committee, noted that "the view was widely held that international officials should be true representatives of the culture and personality of the country of which they were nationals, and that those who elected to break their ties with that country could no longer claim to fulfil the conditions governing employment in the United Nations" (see A/2615, paras. 69 and 70). The former Staff Rules were amended to reflect that policy, which continues to find expression in provisional Staff Rule 1.5 (c): "A staff member who intends to acquire permanent residence status in any country other than that of his or her nationality [...] shall notify the Secretary-General of that intention before the change in residence status [...] becomes final".

42. In paragraphs 37 to 41 of his report, the Secretary-General sets out the reasoning behind his proposal that the General Assembly reconsider the requirement to renounce permanent residence status as it applies to all internationally recruited staff members. His main arguments are that (a) in an era when family situations have increasingly shifted from national to international settings, the right to permanent resident status is an important factor with respect to establishing and maintaining family ties; and (b) the requirement to renounce permanent resident status hampers mobility.

43. The Advisory Committee notes that provisional staff rule 4.5 (d) provides the basis to discontinue international benefits to staff members who become permanent residents of the country of their duty station. Upon enquiry, the Committee was informed that discontinuing the requirement to renounce permanent resident status might have financial consequences for the Organization. The Committee requested, but did not receive, information on the number of staff members who may be affected by provisional staff rule 4.5 (d). **The Advisory Committee recommends that this information, as well as data on the financial impact of removing the**

requirement to renounce permanent resident status, be provided to the General Assembly at the time of its consideration of this question.

44. The Advisory Committee recalls that, under the former Staff Rules, staff members holding 200 and 300 series appointments and serving outside the United States were not required to give up their permanent residency. However, since many of those staff members will now transition to fixed-term appointments they will, as a result, be required to give up their permanent resident status as a prerequisite for continued employment with the United Nations. **The Advisory Committee believes that it is unreasonable to expect serving staff members to make a choice between renouncing their permanent resident status and continuing their employment with the Organization, and therefore recommends that appropriate measures be taken to ensure that those individuals are not disadvantaged by the introduction of the new contractual regime.**

45. **The Advisory Committee is also of the view that, with the increasing use of fixed-term appointments, it may not be entirely fair to require a candidate to give up permanent resident status, a decision that has long-term consequences, so that he or she can take up a position that may last only two or three years. Accordingly, the Advisory Committee recommends that the General Assembly reconsider that requirement and, in the event that there is agreement to remove it, that provisional staff rule 1.5 (c) be deleted.**

46. **The Advisory Committee recommends that, bearing in mind its observations and recommendations in the preceding paragraphs, the General Assembly take note of the provisional Staff Rules set out in document ST/SGB/2009/7.**

III. Practice of the Secretary-General in disciplinary matters and possible criminal behaviour

47. The report on the practice of the Secretary-General in disciplinary matters and possible criminal behaviour, which covers the period from 1 July 2008 to 30 June 2009 (A/64/269), was submitted in response to General Assembly resolution 59/287, in which the Assembly requested the Secretary-General to inform Member States on an annual basis about all actions taken in cases of established misconduct and/or criminal behaviour and the disciplinary action and, where appropriate, legal action taken in accordance with established procedures and regulations. The report provides a broad overview of the administrative machinery in disciplinary matters, a summary of the cases in respect of which the Secretary-General imposed a disciplinary measure during the reporting period and information on the practice of the Secretary-General in cases of possible criminal behaviour.

48. The Advisory Committee recalls that, effective 1 July 2009, a new system of administration of justice came into force at the United Nations. The Committee notes, in particular, that the Joint Disciplinary Committee was abolished on 30 June 2009 and that a summary of the new system as its affects disciplinary matters will be set out in the Secretary-General's next report on disciplinary matters. The Committee has commented in more detail on the new system of administration of justice in its report on that subject (A/64/508).

IV. Activities of the Ethics Office

49. The report of the Secretary-General on the activities of the Ethics Office (A/64/316) was submitted pursuant to paragraph 16 (i) of General Assembly resolution 60/254, in which the Assembly requested annual reporting on the activities of the Ethics Office and the implementation of ethics policies. The report was also submitted in response to resolution 63/250, in which the Assembly requested the Secretary-General to include in his report on the Ethics Office information on the activities of the United Nations Ethics Committee. The report covers the period from 1 August 2008 to 31 July 2009.

50. In paragraph 16 of his report, the Secretary-General indicates that the development of ethical standards is a key function of the Ethics Office (see Secretary-General's bulletin ST/SGB/2005/22). In this connection, the Advisory Committee notes that the Office has assisted the Procurement Division in the development of relevant standards and procedures and in the review of cases involving vendors who are under investigation, or have been accused, convicted or involved in litigation in which they are alleged to have engaged or did engage in fraudulent, corrupt or unethical practices. The Committee further notes that, according to the Secretary-General, the Director of the Ethics Office will assume the chairmanship of the United Nations Senior Vendor Review Committee, which was established on 15 June 2009 in implementation of the measures contained in the report of the Secretary-General on United Nations procurement reform (see A/60/846/Add.5 and Corr.1). The Advisory Committee recalls that the Senior Vendor Review Committee is a pilot project established for a 12-month period. It also recalls that the Ethics Office was conceived of and established as an independent entity. **Accordingly, with regard to the Director of the Ethics Office retaining the chairmanship of the Committee beyond the 12-month pilot period, the Advisory Committee reiterates its previous comment that it would have reservations about any appearance of an ongoing operational role for the Director of the Ethics Office.** The Advisory Committee has commented in more detail on the composition and functions of the Senior Vendor Review Committee in its report on procurement activities (see A/64/501, paras. 25-27).

51. As for the policy on the acceptance of gifts, the Secretary-General indicates in paragraph 22 of his report (A/64/316) that it has been under review with a view to updating the relevant standards, taking into account the global nature of the work of the United Nations and evolving demands and circumstances. The Advisory Committee notes that the Ethics Office has prepared a draft administrative instruction that addresses the disclosure, storage and, as appropriate, disposal of gifts. **The Advisory Committee trusts that the formal consultations on the draft will be completed as soon as possible so that the final version can be promulgated.**

52. Section III.D, of the report provides information on the financial disclosure programme administered by the Ethics Office. The Advisory Committee notes that, while the Secretary-General has partially responded to its earlier recommendation (see A/63/526, para. 94) by providing data on the number of individuals covered by the programme, the number of individuals who have complied with their filing obligations and the number of individuals who have failed to comply with those obligations, he has not given any indication of the reasons for their failure to comply. Upon enquiry, the Committee was informed that such information was not

currently available. **The Advisory Committee reiterates its earlier recommendation that information on reasons for failure to comply with the provisions of the financial disclosure programme be included in future reports on the activities of the Ethics Office.**

53. In the context of its consideration of the proposed programme budget for 2008-2009, the Advisory Committee recommended that the General Assembly request the Secretary-General to conduct an in-depth analysis of the relative advantages or disadvantages, including costs, of conducting the review of the financial disclosure programme in-house as compared to outsourcing arrangements.[4] In paragraph 57 of his report, the Secretary-General indicates that the process of conducting a third-party feasibility study on that issue was initiated in February 2009. The Advisory Committee was informed, upon enquiry, that the study was due to begin in October 2009 and to be completed within two months, at which point the relevant findings and recommendations would be submitted to the General Assembly for consideration. **The Advisory Committee notes the current status of the feasibility study and trusts that it will be completed within the specified time frame.**

54. In paragraphs 59 to 66 of his report, the Secretary-General describes the action taken by the Ethics Office to ensure the effective implementation of the policy on protection against retaliation for reporting misconduct and for cooperation with duly authorized audits or investigations (hereinafter "protection policy") (see ST/SGB/2005/21). In accordance with that policy, once a prima facie case of retaliation has been determined to exist, the burden of proof shifts to the Organization, requiring the Administration to show that it would have taken the same alleged retaliatory action absent the fact that the individual concerned reported misconduct or cooperated with a duly authorized audit or investigation.

55. In paragraph 66 of his report, the Secretary-General states that a serious lacuna in the above-mentioned policy came to light during the 2008-2009 reporting cycle. In brief, after the Ethics Office determined the existence of a prima facie case of retaliation and referred it to the Office of Internal Oversight Services, the latter declined to proceed with an investigation. While the Ethics Office took the view that, in order to implement fully the protection policy set out by the Secretary-General in his bulletin ST/SGB/2005/21, an investigation was necessary in order to allow the Administration to discharge its burden of proof and, if necessary, take corrective measures, the Office of Legal Affairs confirmed that, on the basis of General Assembly resolution 48/218 B, the Office of Internal Oversight Services had the discretionary authority to decide whether or not to investigate a matter. **The arrangements envisaged to address circumstances in which the Office of Internal Oversight Services declines to investigate cases referred by the Ethics Office should be clarified to the General Assembly.**

56. Section V of the Secretary-General's report is entitled "System-wide Code of Ethics for United Nations personnel". It provides information on the genesis and development of the Code of Ethics, the text of which is set out in the annex to the report. According to the Secretary-General, the Code is written as a short, concise statement of the core values and principles as espoused in the Charter of the United Nations. It is meant to be values-based and aspirational in nature, rather than rules-

[4] See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 7* and corrigendum (A/62/7 and Corr.1), para. I.17.

based and disciplinary. The Code is not meant to be legally binding or provide sanctions for breaches. The Advisory Committee notes from paragraph 83 of the Secretary-General's report that he initiated a system-wide consultation process on the draft code in August 2008.

57. The Advisory Committee recalls, in this regard, that standards of conduct for the international civil service, developed by ICSC and implemented by organizations within the common system, already exist. The Advisory Committee further recalls that, during its deliberations on conditions of service at its sixty-eighth and sixty-ninth sessions, ICSC discussed the draft code of ethics prepared by the Ethics Committee. Some members of the Commission had questions about the legal status of the code of ethics vis-à-vis the standards of conduct and highlighted the need to harmonize the two documents. With specific reference to the standards of conduct, the Commission decided to request its secretariat to work with organizations and representatives of staff federations to undertake an initial review of the standards of conduct to ensure that they continue to meet the needs of the organizations and to define areas that might need updating.[5]

58. **It is not clear to the Advisory Committee what value the voluntary Code of Ethics would add to the Staff Regulations and Rules, which provide the legal framework governing staff conduct. Further, the work to be undertaken by ICSC (see para. 57 above) could have a bearing on a code of ethics for the United Nations. The Advisory Committee therefore recommends that the General Assembly revert to this issue once the review initiated by ICSC has been completed.**

V. Composition of the Secretariat

59. The Secretary-General's report on the composition of the Secretariat (A/64/352) was submitted pursuant to various General Assembly resolutions concerning human resources management, the most recent of which are resolutions 57/305, 59/266, 60/238, 61/244 and 63/250. The report, which covers the period from 1 July 2008 to 30 June 2009, provides information on important demographic characteristics of the Secretariat and on the system of desirable ranges for the geographical distribution of staff.

60. The Advisory Committee has taken note of the report on the composition of the Secretariat and intends to comment in more detail on the information it contains, as well as on the information to be submitted as part of next year's report on the same subject, during its consideration of human resources matters at the sixty-fifth session. **In the interim, the Advisory Committee urges the Secretary-General to intensify his efforts to achieve the geographical distribution and gender balance targets set by the General Assembly.**

[5] Ibid., *Sixty-fourth Session, Supplement No. 30* (A/64/30), para. 35.